

HISTORICAL BACKGROUND OF EMPLOYEE REPRESENTATION IN GERMANY

The desire to establish the right for employee representation in Germany dates back to the 19th century. All efforts to legalize employee representation stem from the philosophy that constitutional rights should be established in industry corresponding to the constitutional social state; they should allow employees to participate in social, personnel, and economic matters for the benefit of the plant, the work force, and the general public. According to German experts in the field of labor/management relations, the idea of employee representation was formed by the fundamental thought that the worker desires to go beyond the employee sphere, and to participate actively in the economic process of production. He wants to be more than just the worker confined to the tasks of his job. He wishes also to view the economic entity and to cooperate in the productive development. Dependency is to be transformed into conscious cooperation, the absolute rule of the employer to be replaced by an industrial constitution through the establishment of works councils.

The legal right of employee representation was established as early as 1920 and has been widely accepted as a democratic feature in management/employee relations. In that year the first works council law was passed with strong support by labor unions. This law legalized the right of councils to play an active part in participating with managers in industry for the mutual benefit of both management and employees. When the dictatorial regime seized power in 1933, labor union activities were declared illegal and the works council law was replaced by a decree which practically put an end to the democratic functioning of true employee representation.

In 1946, the Allied Military Government issued Council Law No. 22 allowing the establishment of works councils as one means of re-introducing democratic principles and methods in management/employee relations. This law again assured the protection of the economic and social interests of employees in German industry. In 1949, Germany had its first parliament again and two new German laws replaced the functions of the Control Council Law. They were the Law for Industrial Constitution of 1952 (BetrVG) which regulated works council activities in private industry, and the Personnel Representation Law of 1955 (PersVG) which provided for the establishment of works councils in the German public service. For about 20 years these two laws more

or less satisfied the political and social demands in the area of employee representation. The trend towards more participation rights for the works force caused intensified discussions in German parliament for revising and modernizing the legal provisions, and finally resulted in a new BetrVG for the German economy which was put in effect in 1972. For the public service the new PersVG passed legislation in 1973 and became effective on 1 April 1974, including most of the progressive codetermination rights included in the Industrial Constitutional Law.

For employees with the US Forces, the development of employee representation was different. Between 1946 and 1955 EUCOM and USAREUR policies authorized the establishment of employee groups which had very limited functions and rights, e.g., they were allowed to make proposals to management and represent employees in grievances. With the introduction of the Collective Tariff Agreement in 1955, which for the first time provided for common working conditions for all employees of the Sending States Forces in Germany, employee representation was put on a different basis.

At that time application of the provisions of pertinent German laws was still considered incompatible with the defense responsibilities of the forces. For this reason, USAREUR established a works council policy which

granted the properly elected works council members more rights and protection. The USAREUR policy, however, did neither give the councils a proper legal status nor the right to appeal a management decision to a German court. This was accomplished in 1963 when the status of the Sending States Forces in Germany was revised by the Supplementary Agreement to the NATO Status of Forces Agreement (SOFA). Article 56 of this international agreement stipulated that German labor laws will apply to the LN employees of the forces as it does to employees of the German Army. With respect to the PersVG the Protocol of Signature to Article 56, Paragraph 9 of the Supplementary Agreement provided for certain deviations from the PersVG, to meet the specific needs of the forces, such as the two-command level employee representation with no Head Works Council at Headquarters, US Army Europe and Seventh Army, and the restriction to cooperation rights instead of the codetermination rights established in the law.

For several years, the relationship between management and works councils operating on this basis was excellent. German unions and public opinion, however, were still concerned that German citizens employed by the forces did not enjoy the full labor law in their own country, as third country nationals did in a foreign country working for the German industry. Therefore, about 1966, The Federal Republic of Germany insisted on re-negotiating the Protocol of

Signature. In 1974, an amendment to the Protocol of Signature regarding Article 56, Paragraph 9 of the Supplementary Agreement to the NATO SOFA was finally ratified. It marked another step forward to apply more closely the PersVG as it applied to the civilian work force of the German Army. However, it still allowed the forces certain deviations from the basic law, in the interest of the defense mission.

In June 1974 the forces decided to apply the new PersVG (which went into effect on 1 April 1974) also to their LN employees, subject to the deviations and exemptions established in the revised Protocol of Signature. This law considerably increased the rights of works councils at US Forces installations in line with a more progressive concept of employee representation and employee participation in the managerial decision-making process. The 1974 law also resulted in expansion of the works council structure and in an increase of the number of employee representatives on the local, district, and head works councils, based on the numbers of employees represented. These councils served for three year terms. The 1982 general elections resulted in a total of 280 works council at the local agency level, seven at the intermediate command level, and 31 representatives from throughout Germany on the USAREUR and Seventh Army Head Works Council.

In 1993, on request of Germany, all sending states and Germany

entered into negotiations to develop extensive changes to the NATO SOFA and its associated agreements. On 29 Feb 98, the ratification documents of Germany and the sending states were finally deposited at Washington DC, and the negotiated changes became legally effective on 29 Mar 98. In the personnel representation area, the most significant change was the closer approximation to the German Federal Personnel Representation Law (“Bundespersönalvertretungsgesetz”), through drastically increasing the matters subject to works council codetermination, and simultaneously decreasing those matters that are subject to cooperation only.